

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

RIN 3133-AE55

Investment and Deposit Activities - Bank Notes

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) proposes to amend the maturity requirement for bank notes to be permissible investments for federal credit unions (FCUs) by removing the word “original” from the current requirement that bank notes have “original weighted average maturities of less than 5 years.” This amendment will provide regulatory relief for FCUs.

DATES: Comments must be received on or before [Insert date 30 days following date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods, but please send comments by one method only:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:
http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] – Comments on Proposed Rule – Bank Notes” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: John Nilles, Senior Capital Markets Specialist, Office of Examination and Insurance, at the above address or telephone (703) 518-6360; or Justin M. Anderson, Senior Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

II. Proposed Amendments

III. Regulatory Procedures

I. Background

By NCUA regulation, bank notes with original weighted average maturities of less than 5 years are permissible investments for FCUs.¹ The authority for FCUs to invest in these bank notes is derived from the provision of the Federal Credit Union Act (the Act) that permits FCUs to make deposits in, among other things, national and state banks. The Act does not provide authority for FCUs to purchase bank notes that are not deposits. The Act, however, does not define “deposit.” NCUA’s long standing policy has been to use the definition of deposit in Regulation D. Regulation D provides, in relevant part, that a liability of a depository institution can be a “deposit” if, among other things: 1) it is insured; 2) it is not subordinated to the claims of depositors; and 3) it has a weighted average maturity of less than five years.² The Board notes that the third prong of the above test does not include the word “original.”

When the Board first added “bank notes” as a permissible investment to its investment regulation, Part 703, the Board noted in the preamble to that proposed rule that it was codifying the position NCUA had taken in previously issued legal opinions on the topic.³ Those legal opinions articulated NCUA’s policy of using the Regulation D definition of “deposit” and interpreting “weighted average maturity” as being the *original* weighted average maturity.⁴ While this interpretation made it easier for FCUs to calculate the weighted average maturity,⁵ the Board is aware that this may now be unintentionally burdensome to FCUs by limiting the offerings in which FCUs may invest. As such, the Board proposes to remove the word “original” from the maturity requirement and thereby more closely align NCUA’s requirements regarding bank notes with Regulation D.

II. Proposed Amendments

¹ 12 CFR 703.14(f)(5).

² 12 CFR 204.2(a)(1)(vii)(C).

³ 62 FR 32989, 32998 (June 18, 1997).

⁴ See OGC Ops. 96-0625 (July 22, 1996) and 02-0830 (Dec. 4, 2002).

⁵ Id.

This proposed rule will amend the maturity requirement for bank notes to be permissible investments for FCUs by removing the word “original” from the current requirement that bank notes have “original weighted average maturities of less than 5 years.” As noted, this will more closely align NCUA’s investment restrictions with the definition of “deposit” in Regulation D. This proposed rule also will provide FCUs with some measure of regulatory relief. By removing the word “original,” which ties the bank note’s maturity to its original date of issuance, FCUs will be permitted to select from a much larger pool of possible bank note offerings. Expanding the list of permissible offerings will result in: 1) cheaper execution prices, as the “less than 5 years” element resulted in those bank notes often selling at a premium; 2) flexibility for FCUs to purchase bank notes that were originally issued⁶ with maturities greater than 5 years; and 3) FCUs being able to spend less time and effort in finding suitable offerings.

Further, removing the word “original” will not pose any safety or soundness concerns. Safety and soundness concerns generally apply to an FCU’s overall maturity risk on a portfolio-wide basis and not to any one investment. If this rule is finalized as proposed, FCUs would be permitted to purchase bank notes that had original maturities greater than 5 years but have *remaining* maturities of *less than 5* years.

The Board is issuing this proposal with a 30-day comment period rather than its traditional 60-day comment period. The shortened period reflects the simplicity of the proposed amendment and also enables the Board to provide expedited regulatory relief in this area.

III. Regulatory Procedures

1. Regulatory Flexibility Act.

The Regulatory Flexibility Act requires NCUA to prepare an analysis of any significant economic impact a regulation may have on a substantial number of small entities (primarily

⁶ Under this proposal FCUs could purchase a bank note that was originally issued with a maturity longer than five years, provided that, at the time of purchase, the bank note has a remaining maturity of five years or less.

those under \$50 million in assets).⁷ This proposed rule will have a minimal economic impact on credit unions as bank notes are just one small portion of a typical investment portfolio. Accordingly, NCUA certifies the rule will not have a significant economic impact on a substantial number of small credit unions.

2. Paperwork Reduction Act.

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden or increases an existing burden.⁸ For purposes of the PRA, a paperwork burden may take the form of a reporting or recordkeeping requirement, both referred to as information collections. This proposed rule creates new investment options for FCUs but will not create any new burdens or increase any existing burdens. Therefore, a PRA analysis is not required.

3. Executive Order 13132.

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The proposed rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has, therefore, determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

4. Assessment of Federal Regulations and Policies on Families.

⁷ 5 U.S.C. 603(a); 12 U.S.C. 1787(c)(1).

⁸ 44 U.S.C. 3507(d); 5 CFR part 1320.

NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 703

Credit unions, Investments.

By the National Credit Union Administration Board on _____.

Gerard Poliquin,
Secretary of the Board.

For the reasons discussed above, the National Credit Union Administration proposes to amend 12 CFR part 703 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), and 1757(15).

2. Amend §703.14(f)(5) by deleting the word “original”.